

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
April 21, 2008**

Members Present:

Michael Villyard
Michael Gallagher
Liz Victor
Helen Dutmer
George L. Alejos
Paul Klein
Mary Rogers
Andrew Ozuna
Gene Camargo
Mimi Moffat

Staff:

Roderick Sanchez, Director
Chris Looney, Planning Manager
Rudy Nino, Senior Planner
Michael Farber, Planner
Jacob Floyd, Planner
Paul Wendland, Asst. City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Villyard, Chairman, called the meeting to order and called roll of the applicants for each case.

Ms. Moffat arrived at 1:17 p.m.

CASE NO. A-08-054

Applicant – Margaret Lowry
Lot 18, Block 3, NCB 15248
7322 Lyia Branch
Zoned: "R-5" Single-Family District

The applicant is requesting for a Special Exception to operate a one-operator beauty shop in a residential area.

Michael Farber, Planner, presented background and staff's recommendation of approval on this case. He indicated 35 notices were mailed, 1 returned in favor and 1 was returned in opposition.

Margaret Lowry, applicant, stated the reason for this request to work out her garage because she cannot work at a salon because of the health condition of her daughter. She also stated she schedule her clients one after the other to maintain traffic to a minimum. She further stated the complaint a neighbor had regarding traffic did not pertain to her since those cars did not belong to her or her clients.

Brian Curry, applicant, stated this request would allow them to have close contact with the medical needs of their daughter.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-054 closed.

MOTION

A motion was made by **Ms. Rogers**. Regarding Appeal No. **A-08-054**, subject property description **Lot 18, Block 3, NCB 15248**, located at **7322 Lyia Branch**, applicant being **Margaret Lowry**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-054**, application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of this chapter in that **it will not create any safety hazards in the area**. The public welfare and convenience will substantially served in that **the people in the neighborhood will be served with this particular business**. Additionally **it will contribute to the development of the community while retaining its original character**. The neighboring property will not substantially injured by such proposed use in that **since only one person at a time is expected to be served there will be adequate parking in front of the house or in the drive**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **it will be compatible with other structures, the shop will be located in the house and does not change the character of the house at all and therefore it will maintain the overall character of the neighborhood**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **this exception will promote and develop the use of the area**. Optional conditions on this as stated are that the shop will be open from 6 am in the morning to 6 pm Tuesday thru Saturday with the understanding that the number of hours that this would total up to will not be completely used in that the applicant will be administering medications and care for a child who has illness. The duration of this special exception is up to two years. The motion seconded by **Ms. Moffat**.

AYES: Rogers, Dutmer, Ozuna, Alejos, Moffat, Klein, Victor, Camargo, Gallagher, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-055

Applicant – Newleaf Homes, LLC
Lot 64, Block 3, NCB 16412
14418 Pious

Zoned: "R-5" Residential Single-Family District

The applicant is requesting for a variance from the Unified Development Code requirement that a minimum 20-foot rear setback be maintained in R-5 zoning districts in order to keep an existing structure 14-feet 5-inches from the rear property line.

Michael Farber, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 3 notices mailed, 1 was returned in favor and 0 were returned in opposition.

Fred Ghavidel, representative, stated the reason for this request is to continue with the construction of the house. He also stated he would not be issued his building permits until he was in compliance or the board of adjustment granted this variance. He further stated it would cost him too much money to replat the property.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-055 closed.

MOTION

A motion was made by **Mr. Gallagher**. Reference Appeal No. **A-08-055**, variance application for a **5-foot 7-inch variance from the Unified Development Code requirement that a minimum 20-foot rear setback be maintained in R-5 zoning districts in order to keep an existing structure 14-feet 5-inches from the rear property line**, the subject property being **Lot 64, Block 3, NCB 16412**, the address being **14418 Pious**, the applicant is **Newleaf Homes, LLC**. I move that the Board of Adjustment grant the applicants request regarding Appeal No **A-08-055**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Such variance will not be contrary to the public interest in that **what we are looking at here is the peculiar lot actually turns out to be a side yard setback by the effective property**. Due to the special conditions a literal enforcement of the ordinance would result in unnecessary hardship in that **this structure has to the confusion of working with the City of San Antonio already had the foundation poured in which a foundation inspector came out and failed to notice that the rear yard setback requirement had not been met**. So that the spirit of the ordinance is observed and substantial justice is done in that **no other changes to the land are sought by the applicant**. Such variance will not authorize the operation of a uses other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **there is no change presented to the use of this property**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **for those of you unfamiliar with this property must realize this used to be a vacant land that was covered with large piles of gravel, of bark, of trash, of sand and now we have beautiful subdivision going up in this area and these homes should be permitted to be built**. Such

variance will not alter the essential character of the districts in which the variance is sought **in that this is not something that would alter but rather improve the district.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the individual working on this project has attempted to work with the city and is attempting now to try to meet those requirements.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in **that the individual has tried to work on this and to meet the requirements of the city with the confusion that has caused this variance necessity.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **this is a specific variance for this specific property and again with the effect being with on the property behind it turns out to be a side yard rather than a rear yard setback problem.** The variance will not adversely affect the public health, safety or welfare of the public in that **no traffic, pedestrian, or other safety concerns really exist if we allow this construction to continue.** The motion seconded by Mr. Ozuna.

AYES: Gallagher, Alejos, Dutmer

NAY: Ozuna, Moffat, Victor, Camargo, Klein, Rogers, Villyard

THE VARIANCE WAS NOT GRANTED.

Board members took a 5-minute recess.

CASE NO. A-08-056

Applicant – Ramon A. Edmiston

Lots 148, Block 1, NCB 17285

3514 Pavillion Circle

Zoned: "PUD R-6" Residential Single-Family Planned Unit Development District

The applicant is requesting for a 3-foot variance from the Unified Development Code requirement that a minimum 5-foot side and rear setback be maintained for in-ground pools excavated to a depth greater than three (3) feet, in order to construct an in-ground pool that will sit 2-feet from the side and rear property lines.

Michael Farber, Planner, presented background and staff's recommendation of approval on this case. He indicated 23 notices were mailed, 0 returned in favor and 0 were returned in opposition and no response from Town Lake Garden Neighborhood Association.

Ramon Edmiston, owner, stated the reason for this request is to support he building of an in-ground swimming pool. He also stated he chose the location of the pool because his is planning to add two rooms by the pool. He is planning to build a family room that will have an opening to the pool. This variance would allow him to put a swimming pool that will be 13-feet wide versus a 10-feet wide at the shallow end and 10 ½ wide versus 7 ½ feet wide at the deep end.

The swimming pool would be too narrow to really support pool activities such as swimming, exercising, and games without the approval of this variance.

No citizens to speak

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-056 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No. **A-08-056**, this is a variance application for a **3-foot variance from the Unified Development Code requirement that a minimum 5-foot side and rear setback be maintained for in-ground pools excavated to a depth greater than three (3) feet, in order to construct an in-ground pool that will sit 2-feet from the side and rear property lines**, subject property is **Lot 148, Block 1, NCB 17285**, the address is **3514 Pavilion Circle**, the zoning is **"PUD R-6" Residential Single-Family Planned Unit Development District**, the existing use is a **single-family residence**, the applicant **Ramon A. Edmiston**. I move that the Board of Adjustment grant the applicants request regarding this appeal in the application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest, in that **several notices have been mailed and there does not appear to be an adverse impact resulting from the notices that were received from the homeowners within the mailing area**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this is a planned unit development, this is a small lot, and that the owner is requesting to utilize his property to the fullest**. So that the spirit of the ordinance is observed and substantial, justice is done in that **no other changes to the land are sought by the applicant and it will remain single-family residential use**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **this is residential "R-6" property and swimming pools are allowed within "R-6" residential zoning**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **this is not an uncommon use in this property and currently an existing above grade swimming pool is used by the applicant**. Such variance will not alter the essential character of the districts in which the variance is sought in that **swimming pools are accepted components of residential life in "R-6" zoning**. Such variance will be in harmony with the spirit and purpose of this chapter in that **neighbors in the immediate area some have apparently voiced their concern and support for this particular applicant**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **this is one particular side yard where it is located is in fact a planted maintenance and access easement and it will require from testimony we have heard from staff conformance from the zoning commission and planning that will require a replat and approval for this variance to be approved**. The variance will not substantially weaken the

general purposes of this chapter of the regulations herein established for the specified district in that **this is a swimming pool and pools are accepted in "R-6" zoning.** The variance will not adversely affect the public health, safety or welfare of the public in that **the adjoining neighbor will have according to testimony we have heard while limited less than 5 feet sufficient area to access his property for the purpose maintenance and this will not crate a traffic hazard.** The motion seconded by Ms. Dutmer.

AYES: Camargo, Rogers, Ozuna

NAY: Klein, Dutmer, Moffat, Alejos, Gallagher, Villyard

RECUSAL: Victor

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-08-057

Applicant – Tommy Bordelon
Lot 1, Block 1, NCB 14845
5044 North Loop 1604 West
Zoned: "C-3" General Commercial District

The applicant is requesting for a 24-foot, 8-inch variance from the Unified Development Code requirement that a minimum 3-foot side setback be maintained in C-3 zoning districts when abutting residential zoning districts, in order to keep an existing structure 5-feet, 4-inches from the side property line.

Michael Farber, Planner, presented background and staff's recommendation of approval on this case. He indicated 38 notices were mailed, 2 returned in favor and 0 were returned in opposition.

Tommy Bordelon, representative, stated the reason for this request is because the addition of the kitchen is the most feasible and the most logical spot to put onto the existing building. The master plan also belongs to the temple and it is going to be a parking lot.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-052 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. A-08-057, **A 24-foot, 8-inch variance from the Unified Development Code requirement that a minimum 30-foot side setback be maintained in C-3 zoning districts when abutting residential zoning districts, in order to approve a new structure and to keep an existing structure 5-feet, 4-inches from the side property line, subject property description is Lot 1, Block 1, NCB 14845, located at 5044 North Loop 1604 West, the applicant is Tommy Bordelon, and the owner is Mr. Mandir. I**

move that the Board of Adjustment grant the applicants request regarding Appeal No. A-08-057 application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest, in that **the "C-3" zoning is to remain on the parcel and the surrounding land uses are industrial in nature and we saw evidence provided to us that we have no parties in opposition to the proposed variance.** Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the zoning this merely a technicality in my view and that the adjoining property is zoned "R-6" which necessitates the amendment.** Had the property been commercial zoned the existing subject building would be in compliance and we also received testimony from the staff that the **"R-6" is most likely not a realistic zoning use for the adjoining property and that the surrounding land use are industrial and most likely that the neighboring property would be rezoned to industrial at the time it would be put to productive use.** So that the spirit of the ordinance is observed and substantial, justice is done in that **again the zoning is to remain and we do have staff approval on the amendment.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the "C-3" zoning permits existing uses on the property and no other variances or land uses changes are proposed.** Such variance will not substantially or permanently injure the district in which that variance is sought in that **there are no proposed changes in land uses with the variance.** Such variance will not alter the essential character of the districts in which the variance is sought in that **the 16 hundred square foot expansion that is proposed is in conformity with the "C-3" zoning and the "R-6" zoning on the side again is not the highest and best use for the adjoining tract.** Had it been a commercial zoning we would not be here today. Such variance will be in harmony with the spirit and purpose of this chapter in that **the main structure to remain and there is no other changes proposed in land use on the proposed.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located **for the above reasons.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **again there is no proposed change in land uses proposed and we do have a no opposition for the proposed variance and the subject property is an industrial park with industrial uses surrounding the property.** The variance will not adversely affect the public health, safety or welfare of the public in that **when the proposed addition is constructed the applicant will pull a building a permit and all construction in condition that is approved by the City of San Antonio.** The motion seconded by Ms. Rogers.

AYES: Ozuna, Rogers, Camargo, Moffat, Alejos, Victor, Gallagher, Dutmer, Klein, Villyard

NAY: None

THE VARIANCE WAS GRANTED.



Postpone of May 5, 2008 Regularly Scheduled Meeting

Mr. Gallagher made a motion to cancel May 5, 2008 regularly scheduled meeting and seconded by Mr. Klein.

Discussion of potential Unified Development Code amendments

Chris Looney discussed potential UDC amendments to be proposed by Board of Adjustment members.

Approval of the Minutes

Mr. Gallagher made a motion to approve April 21, 2008 minutes and was seconded by **Ms. Dutmer** and all members voted in the affirmative.

There being no further discussion, meeting adjourned at 3:41 p.m.

APPROVED BY: _____

D. Mike Villyard, Chairman

OR

Michael R. Gallagher
Michael Gallagher, Vice-Chair

DATE: _____

June 16, 2008

ATTESTED BY: _____

Christopher J. Looney
Christopher J. Looney
Development Services, Planning Manager

DATE: _____

6-16-08